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In The

SUPREME COURT OF THE UNITED STATES

Supreme Court, U. S.
FILED
JUL 18 1972
MICHAEL RODAK, JR., CLERK

No. . . . .

WILLIAM L. MARTIN,
Petitioner,

vs.

UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals

For the Sixth Circuit

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In The

SUPREME COURT OF THE UNITED STATES

No. '. . . . .

WILLIAM L. MARTIN,
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vs.

UNITED STATES,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
For the Sixth Circuit

Petitioner, William L. Martin, prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Sixth Circuit entered April 21, 1972, reversing a judgment of the United States District Court for the Middle District of Tennessee, Nashville Division, entered on May 14, 1971 and amended on May 17, 1971.

OPINIONS BELOW

Neither the opinion of the United States Court of Appeals for the Sixth Circuit on April 21, 1972, reversing the United States District Court for the Middle District of Tennessee, Nashville Division, nor the District Court's opinion of May 14, 1971 is reported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C., § 1254 (1).

QUESTION PRESENTED

Whether or not the express language contained in the Food Stamp Act of 1964, 78 Stat. 703, providing for a trial de novo entitles the petitioner to a full review of his case in the District Court and at the same time, empowers the Court to make its own findings of fact, and if necessary, modify the decision of the administrative agency.

STATUTES INVOLVED

Section 11 of the Act, 7 U.S.C. 2020, provides that:

> Any approved retail food store or wholesale food concern may be disqualified from further participation in the food stamp program on a finding, made as specified in the regulations, that such store or concern has violated any of the provisions of this chapter, or of the regulations issued pursuant to this chapter. Such disqualification shall be for such period of time as may be determined in accordance with regulations issued pursuant to this chapter. The action of disqualification shall be subject to review as provided in Section 2022 of this title.

Section 13 of the Act, 7 U.S.C. 2022, provides in pertinent part as follows:

> Whenever --
>
> * * *
>
> (b) a retail food store or a wholesale food concern is disqualified under the provisions of Section 2020 of this title, * * *
>
> * * *
>
> notice of such administrative action shall be issued to the retail food store or wholesale food concern involved. * * *

> If such store or concern is aggrieved by such action, it may, in accordance with regulations promulgated under this chapter * * * file a written request for an opportunity to submit information in support of its position to such person or persons as the regulations may designate. * * * [S]uch information as may be submitted by the store or concern as well as such other information as may be available, shall be reviewed by the person or persons designated, who shall, subject to the right of judicial review hereinafter provided, make a determination which shall be final * * *. If the store or concern feels aggrieved by such final determination he may obtain judicial review thereof by filing a complaint against the United States * * * requesting the Court to set aside such determination. * * * The suit * * * shall be a trial de novo by the Court in which the Court shall determine the validity of the questioned administrative action in issue. If the Court determines that such administrative action is invalid it shall enter such judgment or order as it determines is in accordance with the law and the evidence. * * *

STATEMENT OF THE CASE - FACTS

Petitioner, a retail food store owner, brought this action in the District Court to review the validity of a final determination of the Department of Agriculture disqualifying his store from participation in the Food Stamp Program for six months for violation of the Food Stamp Act and Regulations. The disqualification was based upon petitioner's employees' admitted acceptance of food stamps in exchange for non-food items. The United States appealed from a judgment from the District Court reducing the disqualification period from six months to thirty days.

The proceedings at the administrative level were conducted without an evidentiary hearing. The entire investigation leading up to the petitioner's disqualification was carried on through

correspondence, copies of which are included in the appendix, (App.6a - 21a)and such facts as appear in a stipulation (App. 3a-5a) filed by both parties in the District Court.

The petitioner was the owner of two retail food stores at the time in question. These were both known as Bill Martin's Food Town and were located at 221 South Eleventh Street and North First Street, Nashville, Tennessee. In March 1968 these stores became authorizied to participate in the Food Stamp Program pursuant to the Food Stamp Act of 1964 and implementing regulations.[1/] In June 1968 food stamp officials from the Department of Agriculture visited the stores

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1/ Section 8 of the Food Stamp Act, 7 U.S.C. 2017,; 7 C.F.R. 1602.1 (1970), now 7 C.F.R. 272.1 (1971).

for the purpose of instructing the owner and employees on the regulations concerning redemption of food stamps and what items were eligible to be exchanged for food stamps (App.3a).[2/]

On September 10, 1968, Mr. Leo S. Haley, Officer-in-Charge of the Nashville office of the Food Stamp Program, visited the 11th Street Store to discuss with its manager a complaint that the store had been selling ineligible items in exchange for food coupons (App. 3a-6a). Because the manager denied that ineligible items had

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2/ § 5(a) of the Food Stamp Act of 1964, 7 U.S.C. 2013 (a), empowers the Secretary of Agriculture to administer the food stamp program. The Secretary has delegated this authority to the Food and Nutrition Service of the Department of Agriculture. See 7 C.F.R. 270.3(a) (1971), formerly 7 C.F.R. 1600.3(a) (1970). The earlier regulation delegated the authority to the Consumer and Marketing Service of the Department of Agriculture. The Food and Nutrition Service was created from parts of the Consumer and Marketing Service in August 1969, and was then delegated the responsibility to act for the Secretary of Agriculture in regard to the Food Stamp Program among other things. See 34 F.R. 13119. See 34 F.R. 19475 (1969) and 35 F.R. 8835-37 (1970).

been exchanged (App. 6a), an investigation was initiated by the Office of the Inspector General, Department of Agriculture (App. 4a). This investigation was conducted by Special Agent Joseph W. Brooks who visited both stores on five different dates in July and August, 1969, and purchased the certain ineligible items with food stamps in separate transactions with three clerks at the 11th Street Store, and four clerks at the 1st Street Store.

On September 24, 1969, the Southeast Regional Office of the Food and Nutrition Service sent letters to the plaintiff at each store, advising him of the foregoing information obtained as a result of the investigation (App. 4a, 7a, 12a). These letters requested a reply by October 7, 1969 (App. 4a, 8a, 12a). By letter dated October 7, 1969, plaintiff acknowledged that the violations had occurred, explaining that "[i]n all probability, it is a result of negligence on the part of the

undersigned to set up a program to instruct new employees when they are employed" (App. 13a).

In letters of December 5 and 8, 1969, plaintiff was informed by the Southeast Regional Office that, as a result of the violations, the 1st Street and 11th Street stores were disqualified from participation in the Food Stamp Program for a period of six months (App. 4a,14a,17a)[3/] These letters informed plaintiff of his right to administrative review upon request (App. 4a, 15a, 17a).

Plaintiff requested administrative review in the letter of December 9, 1969 (App. 4a, 18a, 19a). In this letter he

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3/ Mr. Haley, Officer-in-Charge of the Nashville office, had originally recommended a one year disqualification in his report dated October 13, 1969, but this recommendation was reduced to six months by the Southeast Regional Office after receipt of plaintiff's explanatory letter of October 16, 1969. The six month recommendation was thereupon approved by the head office of the Food and Nutrition Service, in Washington. See 7 C.F.R. 272.6 (b),(c) (1971), formerly 1602.6 (b),(c) (1970).

stated that the violations were due to "a tremendous turn-over in personnel" and that since the violations had occurred, he had taken "every precaution to see that they do not occur again" (App.18a).

By letter of October 12, 1970, the Food Stamp Review Officer in Washington advised plaintiff that he had given "[c]areful consideration * * * to the information you have furnished in support of your position that your store * * * should not be disqualified from the Food Stamp Program" (App. 20a). The letter concluded that . . . "the Director of Food Stamp Division correctly decided that this store and you, as owner, should be disqualified for six months". (App. 5a, 20a, 21a).[4/]

4/ The authority of the Food Stamp Review Officer, and procedures governing administrative review by him, are set forth at 7 C.F.R. 273.1 through 273.9 (1971), formerly 7 C.F.R. 1603.1 through 1603.9 (1970)

On October 29, 1970, prior to the effective date of this disqualification, plaintiff brought this action in the District Court pursuant to 7 U.S.C. 2022 to review the validity of the administrative determination to disqualify him (App. 1a).[5/] The Court stayed the disqualification pending the outcome of the litigation (App. 2a). On May 7, 1971, the District Court tried the case de novo and heard testimony of both plaintiff and Mr. Haley. Thereafter, on May 14, 1971, the Court filed its findings of fact (App. 22a, 23a) in which it found that the claimed violations had occurred, as plaintiff had admitted them, but concluded that his "suspension from the program for six months is too harsh under the present facts and circumstances . . ."

5/ By that time plaintiff had sold the 1st Street store (App. 7a) and hence the present action involved only the 11th Street store. Two additional stores which plaintiff purchased in the meantime were approved for the program and are not here involved.

The District Court thereupon ordered the suspension period reduced from six months to thirty days (App. 23a, 24a). 6/

The petitioner's appeal at the District Court level was brought pursuant to 7 U.S.C. 2022 and was a trial de novo. A full hearing was held in which the District Court had an opportunity to review all of the evidence and to examine the demeanor of the witnesses. In its revised findings of fact (App. 22a, 23a), the Court remarked "There is no question about the honesty and sincerity of William L. Martin, his honesty being conceded by the government." He had cooperated with the government in its investigation." (App. 23a). The Court also made mention of the fact that during

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6/ The Court ordered the period of disqualification to extend "from and after May 17, 1971." (App. 24a). In accordance threwith plaintiff's store was suspended for a one month period, from May 17 to June 15, 1971. The question now is whether the store should be suspended for an additional 5 months.

the time in which this litigation was pending, the petitioner had acquired two additional stores which had qualified with Mr. Haley's knowledge and approval, and were participating in the Food Stamp Program. With respect to the petitioner's conduct during this period, the Court noted that there had been no subsequent violations in either of the two newly acquired stores, or in the store which was in operation at the time the violations occurred. (App. 22a).

These factors, as well as the evidence establishing the violations and other evidence produced at the trial, showed to the Court that such a severe penalty as imposed by the Secretary of Agriculture would penalize the petitioner to the extent of the loss of several thousands of dollars in direct sales, plus the loss of customers who would be forced to trade elsewhere.

The United States appealed the decision of the District Court to the United States

Court of Appeals for the Sixth Circuit, which Court in a two to one opinion, On April 21, 1972 reversed the District Court and reinstated the six month period of disqualification against the petitioner. (App. 24a).

It is respectfully submitted that the majority opinion of the United States of Appeals for the Sixth Circuit erroneously interpreted "trial de novo" and that the dissenting opinion of Circuit Judge Edwards correctly construes the statute affording the petitioner a trial de novo.

STATEMENT OF THE CASE - LAW

THE EXPRESS LANGUAGE CONTAINED IN THE FOOD STAMP ACT., i.e., "The suit in the . . . District Court . . . shall be a trial de novo . . .," CLEARLY MANIFESTS A CONGRESSIONAL INTENT TO PROVIDE FOR A COMPLETE EVIDENTIARY HEARING IN WHICH THE COURT IS PERMITTED TO MAKE AN INDEPENDENT DETERMINATION AS TO WHETHER THE SANCTIONS IMPOSED BY THE ADMINISTRATIVE AGENCY ARE TOO HARSH.

This case presents an issue dealing with the scope of judicial review under the 1964

Food Stamp Act. The majority opinion of the Sixth Circuit Court of Appeals stated that the statute authorizes a review only on the merits of the case, and not on the period of disqualification. Upon these grounds, the Court of Appeals reversed the District Court's decision and held that the reviewing Court lacked the authority to modify the sanctions imposed by the Secretary.

Petitioner submits that in according this interpretation to the language of the statute, the Sixth Circuit Court has disregarded the commonly accepted definition of the term "trial de novo." The term "trial de novo" is defined in Black's Law Dictionary (4th Ed. 1951), as follows:

> "A new trial or retrial had in an appellate court in which the whole case is gone into as if no trial whatever had been in the Court below."

This definition is widely accepted by our state and federal courts throughout the

nation. Spano v. Western Fruit Growers, 83 F. 2d 150, 152 (10th Cir. 1936). See also, Words and Phrases, "Trial de novo," Vol. 42 A, pp. 216 et seq (1952).

The principle is firmly established that in the absence of a contrary intent by Congress, the Courts, in construing the language of a statute, will give the words their actual, plain, ordinary and commonly understood meaning. N.L.R.B. vs. Coca Cola Co., 350 U. S. 264 (1968).

The majority opinion of the Sixth Circuit Court of Appeals in the case at bar, construes the language[7/] which follows "trial de novo by the Court" as a limitation upon that term. The dissenting opinion points out that the phrase cited in Footnote 7 is merely descriptive and does not limit the scope of the term "trial de novo". Had Congress sought to

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7/ ". . . in which the Court shall determine the validity of the questioned administrative action in issue.

impose a narrower scope of judicial review in this statute, it could have easily adopted the appropriate language found in other statutes. Instead, however, it chose to provide for a trial de novo and vested the reviewing court with the power to enter such order as it determines is in accordance with the law and the evidence. Such language is broad enough to encompass affirmation, reversal, or modification of the Secretary's decision.

A case relied upon in the Sixth Circuit's majority opinion was that of G. H. Miller & Co. v. United States, 260 F 2d 286 (7th Cir. 1958). The Miller decision dealt with the scope of judicial review under the Commodity Exchange Act. The language of that statute specifically provided that, "The findings of the Secretary of Agriculture as to the facts, if supported by the weight of evidence, shall * * * be conclusive." (Emphasis added), 7 U.S.C.A. 9. While the Commodity Exchange

Act also provided that the reviewing court could modify the secretary's decision, this remedy would only have been possible if the findings had not been supported by the weight of the evidence. Because the findings of the Secretary were found to be supported by the evidence in the Miller case, the Court had no alternative except to affirm the Secretary's decision.

Petitioner submits that the language in the Food Stamp Act provides for a much broader scope of review than that found in the Commodity Exchange Act.

The Sixth Circuit's majority opinion also relied upon Eastern Produce Co. v. Benson, 278 F2d 606 (3rd Cir. 1960). That case dealt with one aspect of judicial review under the Perishable Agricultural Commodities Act. Petitioner submits that this case is not persuasive on the issue presented to this Court in that the Benson Court was governed by 5 USCA 1032.[8/]

8/ This section is now embodied in 28 U.S.C.A. 2342.

which had no provision for a trial de novo and which placed exclusive jurisdiction to review the agency's decision in the Court of Appeals.

While the general rule governing the scope of judicial review of administrative decisions is structured around the substantial evidence rule, there are several instances in which our courts have recognized a Congressional intent to expand the scope of judicial review governing appeals from administrative agencies. Angeles Brokerage Co. v. Carlo Panno Fruit Co., 211 F2d 341 (9th Cir. 1954), John J. Trombetta Co. v. Goldstein and Procacci, 198 F. Supp. 288 (E. D. Pa. 1961), Russ v. Southern Rwy. Co., 334 F.2d 224 (6th Cir. 1964); cert. den. 379 U.S. 991; reh. den. 380 U. S. 938 (1965), Davis, Administrative Law Treatise, Section 29.07, p. 152 (1958).

Of the decisions cited under 7 U.S.C.A 2022, the most significant is the case of Peoples v. United States Dept. of Agr., 427

F.2d 561 (D.C. Cir. 1970). That suit was brought by a number of poor people from Alabama against the Department of Agriculture. The plaintiffs were seeking to alter the way in which the defendants were administering the Food Stamp Act of 1964, the Commodities Distribution Program, and Agricultural Act. The primary issue before the Court was whether or not the plaintiffs had standing to bring such a suit. The Court did, however, discuss the scope of judicial review available under the Food Stamp Act. The following statement is taken from the Court's opinion:

> "The food distributors became involved in the legislation only secondarily, as the means by which Congress hoped to achieve benefit to others (poor people and farmers). The specific review provisions in 7 U.S.C. Sec. 2022 both avoided any possibility that the distributors would be held without a legal right to complain of adverse agency action, and gave them a trial de novo well beyond the scope of review available under the general provisions of the Administrative Procedure Act." (Emphasis added): Id. at 565.

The Supreme Court of the United States has recently held in the case of United States v. First City National Bank, 386 U.S. 361 (1967), that where the statute in question provides for a de novo review, the reviewing court is entirely free to make a decision independent of that made by the governmental agency. In this case, the Court was considering the proper scope of judicial review under the Bank Merger Act of 1966. In construing that part of the act dealing with the scope of judicial review, the Supreme Court held that a review in Court would not be limited in its determination by the substantial evidence rule. Following a brief discussion of that rule, the Court made the following statement:

> "Indeed the 1966 Act provides that the Court in an antitrust action 'shall review de novo the issues presented.' (Emphasis added.) 12 U.S.C. Sec. 1828 (c)(7)(A). It is argued that the use of the word 'review' rather than the use of the word 'trial' indicates a more limited scope to judicial action.

> The words 'review' and 'trial' might conceivably be used interchangeably. The critical words seem to us to be 'de novo' and 'issues presented.' They mean to us that the court should make an independent determination of the issues." (Emphasis added); Id. at 368.

Thus, the Supreme Court of the United States has recognized that in certain instances, Congress intends for the Courts to depart from the substantial evidence rule when reviewing an administrative decision. The appellee maintains that the First City National Bank case, supra, provides ample authority for the proposition that the term trial de novo, as it appears in the Food Stamp Statute (7 USCA 2022), manifests a congressional intent to provide for a complete evidentiary hearing at the trial court level in which the District Court is permitted to make its own determination of the case.

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because it presents a question basic to the constitutional guarantee of the right to a trial. An interpretation of the statute in question has never been before this Honorable Court. The misinterpretation by the United States Court of Appeals for the Sixth Circuit insofar as the meaning of a "trial de novo" should be squarely faced and the error corrected. The District Court and the dissenting opinion of the United States Court of Appeals for the Sixth Circuit concluded, and it is respectfully submitted correctly, that the meaning of the words trial de novo should be afforded the ordinary and usual definition as intended by Congress and it is respectfully submitted that the interpretation placed upon such phrase by the majority opinion of the United States Court of Appeals for the Sixth Circuit is a strained and unreasonable

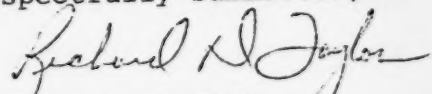
interpretation and contrary to the intent of Congress and does obviously prejudice the rights of the petitioner and any others attempting to utilize the appeal provisions of the statute.

This serious question and interpretation of the Federal statute makes this case a peculiarly appropriate one for the exercise of this Court's discretionary jurisdiction.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,



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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

OCT 29 1970

BRANDON LEWIS, Clerk
By

WILLIAM L. MARTIN,
Petitioner

vs.

THE UNITED STATES OF AMERICA and THE UNITED STATES DEPARTMENT OF AGRICULTURE,
Respondents

PETITION FOR REVIEW

William L. Martin, a citizen and resident of Nashville, Davidson County, Tennessee, and owner of Bill Martin's Food Town, hereby petitions the Court pursuant to Title 7, U.S.C.A., Section 2022, to set aside the determination of the United States Department of Agriculture, Food and Nutrition Service, disqualifying him from the Food Stamp Program for a period of six (6) months, effective on October 30, 1970.

Richard D. Taylor
GLASGOW, ADAMS & TAYLOR
Attorneys for Petitioner
Court Square Building
300 James Robertson Parkway
Nashville, Tennessee 37201

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

OCT 29 1970
BRANDON, LEWIS
By

WILLIAM L. MARTIN,
Petitioner

vs.

THE UNITED STATES OF AMERICA and
THE UNITED STATES DEPARTMENT OF
AGRICULTURE,
Respondents

NO. 5940

STAY ORDER

Upon the motion for a stay order filed by the petitioner herein,

It appearing that irreparable injury would be done to the petitioner's business pending the outcome of the petitioner's request for judicial review made pursuant to Title 7 U.S.C.A. Section 2022,

It further appearing that petitioner has exhausted his administrative remedies and is without other relief and it being in the best interest of justice that the status quo be preserved pending the outcome of the present appeal,

It is ORDERED:

That the order of the respondent agency disqualifying the petitioner from the Food Stamp Program for a period of six (6) months commencing on October 30, 1970, be and the same hereby is stayed pending the disposition of this appeal or until further orders of the Court.

/s/ L. Clure Morton
United States District Judge

ATTEST: A TRUE COPY

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UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

WILLIAM L. MARTIN)

) CIVIL NO. 5940

V.)

UNITED STATES OF AMERICA)

S T I P U L A T I O N

William L. Martin, complainant herein, and the United States of America, by and through the United States Attorney, for the purposes of the United States' Motion for Summary Judgment, stipulate as follows:

An interview was conducted by the Food and Nutrition Service in the United States Department of Agriculture with the manager and owner of Bill Martin Food Town Store, 221 South 11th Street, Nashville, Tennessee, and this store was authorized to participate in the Food Stamp Program on March 13, 1968, pursuant to Title 7, U.S.C. § 2011 et seq, and regulations thereunder. 7 C.F.R. § 1602.1 et seq. On June 19, 1968, the Food and Nutrition Service conducted a visit to the store to educate the owner and employees in regard to the regulations concerning the conduct of redemption of food stamps and what eligible items might be sold under the Program. On September 10, 1968, a compliance visit was made to discuss with the owner a complaint received by way of the office of Herman L. Yeatman, Commissioner, Tennessee Department of Public Welfare, that the store was selling ineligible items for food stamps. On September 11, 1968, the Food and Nutrition Service sent a letter confirming the compliance visit and the complaints to Mrs. Shirley Brummett, manager of the store. A copy of that [illegible] is attached hereto as an exhibit.

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Subsequently, an investigation was instituted by the office of the Inspector General of the Department of Agriculture, conduct by Joseph W. Brooks, a copy of which is appended hereto as an exhibit. During July and August, 1969, five attempts to purchase ineligible items with food stamps were successful. Three clerks were involved in the violative transactions. There were no refusals of ineligible items. A concurrent investigation was conducted regarding another store owned by William L. Martin at 701 North 1st Street. Similar violations were found in five transactions involving four clerks. William L. Martin is no longer associated with the store at 701 North 1st Street.

On September 24, 1969, the Regional Office of the Food and Nutrition Service in Atlanta sent a letter to Mr. Cordell Brun manager of the 221 South 11th Street store, informing him of the information obtained in the course of investigation and requesting a reply by way of information, explanation or evidence concerning the violation, by October 7, 1969. A copy of this letter is attac as an exhibit hereto. On October 16, 1969, William L. Martin, Jr. replied thereto, a copy of which reply is attached as an exhibit hereto.

On December 8, 1969, the Regional Office of the Food and Nutrition Service informed Mr. Martin by certified letter, receive December 11, 1969, that he was disqualified from participation in the Food Stamp Program for a period of six months, with a right to review. A copy of this letter is attached hereto as an exhibit.

A timely request for review of the proposed disqualificati was received by the Food Stamp Review Officer. This letter was dated December 9, 1969, and a copy is attached hereto. Mr. Peter R. Shambora, Food Stamp Review Officer, notified Mr. Martin on December 16, 1969, that the request for the review had been received and that the request had been granted. By letter dated October 2, 1970, Mr. Martin was notified by Mr. Shambora that the review of the proposed disqualification of both stores was being assigned to Mr. Kenneth L. Jones, who is also a Food Stamp R

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The review was made in accordance with the Act and Regulations issued thereunder. Consideration was given to the information contained in the investigation report, information furnished by the Food Stamp Division, and information furnished by Mr. Martin in support of his position that he should not be disqualified.

By letter dated October 12, 1970, Mr. Martin was notified that it was the decision fo the Food Stamp Review Officer to uphold the period of disqualification as recommended by the Director of the Food Stamp Division for each of his then two stores. A copy of the letter directed to each of the stores is attached. The return receipt shows that the letter upholding the disqualification of the store at 221 South 11th Street was received on October 15, 1970.

Respectfully submitted,

CHARLES H. ANDERSON
United States Attorney

IRA E. PARKER, III
Assistant United States Attorney

GLASTON, ADAMS AND TAYLOR

By: _____
RICHARD D. TAYLOR
Counsel for William L. Martin

ID CLOSE IN CENTER

Consumer Food Programs
1808 West End Ave., Room 519
Nashville, Tennessee 37203

September 11, 1968

CERTIFIED MAIL - Return Receipt Requested

Mrs. Shirley Brummitt, Manager
Bill Martin's Food Town
221 South 11th Street
Nashville, Tennessee

Dear Mrs. Brummitt:

This will confirm my conversation with you in your store on Tuesday, September 10, 1968.

During my visit I brought to your attention a rumor I had received that you had sold cigarettes, baby clothing and other ineligible items for food coupons and that you had accepted food coupons as deposit for soft drink bottles. You denied the rumor in its entirety, stating you had never sold any ineligible items for food coupons and had taken only cash as deposit for soft drink bottles. We also discussed change procedures during my visit.

Selling ineligible items for food coupons is in violation of Part 1602.2 (b) of the Food Stamp Program Regulations. Accepting food coupons as deposit for soft drink bottles is in violation of the same Regulation, a copy of which I have attached for your review.

I trust that corrective action will be taken to insure that rumors of this sort will not arise in the future.

Sincerely,

Leo S. Haley

Leo S. Haley
Officer-in-Charge

Attachment

Southwest Regional Office
1799 Peachtree Road, N.E., Room 302
Atlanta, Georgia 38309

September 24, 1969

CERTIFIED MAIL - Return Receipt Requested

Mr. Cordell H. Brummitt, Manager
Bill Martin's Food Town
221 South Eleventh Street
Nashville, Tennessee 37208

Dear Mr. Brummitt:

This is to inform you that on the basis of information obtained in the course of investigation, there is reason to believe that you, doing business as Bill Martin's Food Town at Nashville, Tennessee, have violated the terms and provisions of the regulations governing the Food System Program, 7 C.F.R. 1600 (30 F.R. 4315 as amended, 30 F.R. 8155), 1602 (30 F.R. 6859 as amended 30 F.R. 13861 and 32 F.R. 8519), and 1603 (30 F.R. 13132) (hereinafter referred to as the regulations), in that the following transactions have occurred in your store:

1. On or about July 11, 1969, Mrs. Sina M. Doney, clerk, accepted $4.00 in food coupons (2-$2.00 coupons) in exchange for merchandise which included one can of Merry War lye, one package of (10 boxes) matches, one bar of Lava soap, one package of Lucky Strike cigarettes, one package of (5) electricity fuses, one bottle of Johnson and Johnson medicated powder, and one package of Tums (patent medicine). The acceptance of food coupons in exchange for the above named items was in violation of Sections 1600.2 (l) and 1602.2 (b) of the regulations.

2. On or about July 17, 1969, Mrs. Fannie K. Holloday, clerk, accepted $6.00 in food coupons (3-$2.00 coupons) in exchange for merchandise which included one can of Libby's corned beef (product of Argentina), one box of Brillo soap pads, one aluminum dipper, one package of Viva paper towels, one Kellogg scrub brush #990, one package of Try Me shoe laces, and two packages of Camel cigarettes. The acceptance of food coupons in exchange for the above named items was in violation of Sections 1600.2 (1) and 1602.2 (b) of the regulations.

POOR COPY

3. On or about July 28, 1969, Mrs. Lola T. Fisher, clerk, accepted $6.00 in food coupons (3-$2.00 coupons) in exchange for merchandise which included one box of steel wool balls, one package of ten Sta-In hose washers, one pair of Good Quality work gloves, two fifty foot rolls of Shuford's plastic clothesline, two flashlight batteries, and one can of Drano pipe cleaner. The acceptance of food coupons in exchange for the above named items was in violation of Section 1600.2 (1) and 1602.2 (b) of the regulations.

4. In the transaction described in (3) above, the purchaser received three cents cash as change. The giving of cash as change in a food coupon transaction was in violation of Section 1602.2(d) of the regulations.

5. On or about July 30, 1969, Mrs. Sina M. Doney, clerk, accepted $8.00 in food coupons (4-$2.00 coupons) in exchange for merchandise which included two bars of Ivory soap, one can of Libby's corned beef (product of Argentina), one can of Parkerson's Blam rat and mouse poison, one can of Merry War lye, one can of Black Flag insect spray, one electric light bulb, one package of two Victor mouse traps, and one package of six Square "D" Birdseye diapers. The acceptance of food coupons in exchange for the above named items was in violation of Sections 1600.2 (1) and 1602.2 (b) of the regulations.

6. On or about August 4, 1969, Mrs. Lola T. Fisher, clerk, accepted $8.00 in food coupons (4-$2.00 coupons) in exchange for merchandise which included one large DuPont cellulose sponge, one package of two electric base plugs, one plug of Spark Plug tobacco, one box of Terro ant killer, two bars of Ivory soap, one pair of Benham men's underwear (shorts), one can of Armour roast beef (product of Argentina), one can of Deep Blue smoked oysters (product of Japan), one bottle of Windex glass cleaner, and one package of Salem cigarettes. The acceptance of food coupons in exchange for the above named items was in violation of Sections 1600.2(1) and 1602.2 (b) of the regulations.

In accordance with the provisions of 1602.6(b) of the regulations, you may submit any information, explanation or evidence concerning the above indicated violations of the regulations. A copy of the regulations is attached for your information. Your reply, which may be either oral or written, should be directed to Leo S. Haley, Officer-in-Charge, U.S. Department of Agriculture, Food and Nutrition Service, Suite 519, West End Building, 1808 West End Avenue, Nashville, Tennessee, 37203, and must be received by him on or before October 7, 1969.

Your reply and the information furnished by you therein will be considered by the Food and Nutrition Service, U.S. Department of Agriculture, before a final determination is made in this matter. In the absence of any answer by the above date, we will consider the charges admitted, and will propose to make final determination in this matter on the basis of information available to the Food and Nutrition Service.

Sincerely yours,

Russell H. James, Director
Southeast Region

Attachment

CC: Mr. William L. Martin, Owner
Bill Martin's Food Town
221 South Eleventh Street
Nashville, Tennessee 37206

Miss Kelley
Finance Division
RIC (A-145-643)
OIG
OIC (Nashville, Tenn.)
Regional Attorney (4)

G5

Southeast Regional Office
2795 Peachtree Road, N.E., Room 302
Atlanta, Georgia 30309

September 24, 1969

CERTIFIED MAIL - Return Receipt Requested

Mr. Bill Martin, Owner
Bill Martin's Food Town
701 North First Street
Nashville, Tennessee 37207

Dear Mr. Martin:

This is to inform you that on the basis of information obtained in the course of investigation, there is reason to believe that you, doing business as Bill Martin's Food Town at Nashville, Tennessee, have violated the terms and provisions of the regulations governing the Food Stamp Program, 7 C.F.R. 1600 (30 F.R. 4335 as amended 30 F.R. 6955), 1602 (30 F.R. 6697 as amended 30 F.R. 12851 and 32 F.R. 8219), and 1603 (30 F.R. 13132) (hereinafter referred to as the regulations), in that the following transactions have occurred in your store:

1. On or about July 11, 1969, Mrs. Patricia Scott, clerk, accepted $6.00 in food coupons (3 - $2.00 coupons) in exchange for merchandise which included one package of Valve-Tex moth balls, one pair of School scissors, one roll of Super-Stik friction tape, one can of Drano pipe cleaner, one can of Raid insect spray, and one package of (7) Gillette injector blades. The acceptance of food coupons in exchange for the above named items was in violation of Sections 1600.2 (i) and 1602.2 (b) of the regulations.

2. On or about July 17, 1969, Jerry L. Tobitt, clerk, accepted $8.00 in food coupons (4 - $2.00 coupons) in exchange for merchandise which included one Sylvania three way light bulb, one can of Black Flag insect spray, one box of 12 Ball wide mouth mason jar caps with lids, one box of 12 Ball dome lids, one box of 24 Ideal plastic forks, one tube of Ross contact cement, one bottle of Ivory liquid detergent, one roll of Scottowel paper towels, two packages of Benson & Hedges cigarettes, and two packages of Silva Thin cigarettes. The acceptance of food coupons in exchange for the above named items was in violation of Sections 1600.2 (i) and 1602.2 (b) of the regulations.

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3. On or about July 28, 1969, Lucien K. Patterson, clerk, accepted $8.00 in food coupons (4 - $2.00 coupons) in exchange for merchandise which included one package (4 rolls) of Waldorf bathroom tissue, one bottle of Fresh tablets, one can of Borexo hand cleaner, one can of Raid insect spray, one electricity wall switch, one package of 2 Victor mouse traps, one package of 18 Dixwood clothes pins, one box of Scott Cut-Rite wax sandwich bags, and three packages of Salem cigarettes. The acceptance of food coupons in exchange for the above named items was in violation of Sections 1600.2 (i) and 1602.2 (b) of the regulations.

4. On or about July 30, 1969, Mrs. Willa Cook, clerk, accepted $6.00 in food coupons (3 - $2.00 coupons) in exchange for merchandise which included one electric circuit tester, one can of Armour roast beef (product of Argentina), one can of Plumito drain cleaner, one bar of Dan Zai cleaner, one can of Black Flag insect spray, one Black Flag all purpose sprayer, and one package of Salem cigarettes. The acceptance of food coupons in exchange for the above named items was in violation of Sections 1600.2 (i) and 1602.2 (b) of the regulations.

5. Credit in the form of two one bills totaling 7h¢ was received by the purchaser in the transaction described in (4) above. Giving of credit in excess of h¢ in change in a food coupon transaction was in violation of Section 1602.2 (d) of the regulations.

6. On or about August 4, 1969, Mrs. Patricia Scott, clerk, accepted $8.00 in food coupons (4 - $2.00 coupons) in exchange for merchandise which included one pint can of Wizard charcoal lighter, one can of Armour roast beef (product of Argentina), two bars of Ivory soap, one can of Satwell sardines (product of South West Africa), one Gillette techmatic razor hand cartridge, one package of Salem cigarettes, one bottle of Johnson's baby oil, one Sylvania three way light bulb, one pair of Gerber baby pants, and one bottle of St. Joseph aspirin. The acceptance of food coupons in exchange for the above named items was in violation of Sections 1600.2 (i) and 1602.2 (b) of the regulations.

7. In the transaction described in (6) above, the purchaser received 6¢ in cash as change. The giving of cash as change in a food coupon transaction was in violation of Section 1602.2 (d) of the regulations.

POOR COPY

In accordance with the provisions of 1602.6 (b) of the regulations, you may submit any information, explanation or evidence concerning the above indicated violations of the regulations. A copy of the regulations is attached for your information. Your reply, which may be either oral or written, should be directed to Leo Raley, Officer-in-Charge, U. S. Department of Agriculture, Food and Nutrition Service, Suite 519, West End Building, 1808 West End Avenue, Nashville, Tennessee, 37203, and must be received by him on or before October 7, 1969.

Your reply and the information furnished by you therein will be considered by the Food and Nutrition Service, U. S. Department of Agriculture, before a final determination is made in this matter. In the absence of any answer by the above date, we will consider the charges admitted, and will proceed to make final determination in this matter on the basis of information available to the Food and Nutrition Service.

Sincerely yours,

Russell H. Jones, Director
Southeast Region

Attachment

CC: Miss Kelley
Finance Division
OIG (A-145-642)
NIC
Regional Attorney (4)
OIC (Nashville, Tenn.)

221 South 11th Street
Nashville, Tennessee
October 16, 1969

Mr. Leo S. Haley
Officer In Charge
U. S. Department of Agriculture
Food & Nutrition Service
Suite 519, West End Building
1808 West End Avenue
Nashville, Tennessee 37203

Dear Sir:

Receipt is acknowledged of two letters, both dated 24 September 1969, from your Southeast Regional Office concerning certain probable violations governing the Food Stamp Program.

It is deeply regretted that these violations have occured. In all probability, it is a result of negligence on the part of the undersigned to set up a program to instruct new employees when they are employed. We are having a rapid turnover of employees and as a result, we have not instructed new employees as we should have done.

As a result of your findings, we have now brought these violations to the attention of all employees and have given them more specific instructions on handling Food Stamps. Also, new employees will be thoroughly instructed in this program before they are permitted to handle Food Stamps.

In the future, every precaution will be taken to prevent re-occurances of these violations.

We are interested in participating in the Food Stamp program according to your regulations and regret that these violations have occurred. A more strict policy has been adopted by the undersigned as a result of your findings and all employees have been instructed accordingly.

Please accept my apology and advise if any additional assistance can be given in this matter.

Sincerely,

William L. Martin Jr.

William L. Martin, Jr.
Owner, Martin's FoodTown

55

Southeast Regional Office
1795 Peachtree Road, N.E., Room 302
Atlanta, Georgia 30309

December 5, 1969

CERTIFIED MAIL - Return Receipt Requested

Mr. Bill Martin, Owner
Bill Martin's Food Town
701 North First Street
Nashville, Tennessee 37207

Dear Mr. Martin:

Administrative review and evaluation have been made of the information and evidence contained in the retailer program file, the investigative report, and your reply of October 16, 1969, to our letter of charges dated September 24, 1969. Based upon the review of the information and evidence, and pursuant to Section 1602.6 (c) of the Food Stamp Program regulations, it is the determination of the Director, Food Stamp Division, Food and Nutrition Service, U. S. Department of Agriculture:

1. That you or your employees violated the regulations governing the Food Stamp Program, 7 C.F.R. 1600 (30 F.R. 4315 as amended 30 F.R. 8155), 1602 (30 F.R. 6859 as amended 30 F.R. 13161 and 32 F.R. 8519), and 1603 (30 F.R. 13132), in the manner specified in the letter of charges to you dated September 24, 1969.

2. That such irregular practices demonstrate a lack of regard for program regulations.

3. That Bill Martin's Food Town, and the owner thereof, shall be disqualified from the privilege of participation in the Food Stamp Program.

Therefore, you are hereby notified that Bill Martin's Food Town and Mr. Bill Martin, owner, are disqualified from participation in the Food Stamp Program and Authorization Card TE-56-38-C is revoked effective ten calendar days from your receipt of this notice. However, on or after the expiration of six months from the above effective date, you may apply for reinstatement and if approved, you may be issued a new authorization card and number. Authorization Card TE-56-38-C and all posters, forms, and other official material relating to the program must be surrendered on the above effective date to Leo Haley, Officer-in-Charge, U. S. Department of Agriculture, Food and Nutrition Service, Suite 519, West End Building, 1808 West End Avenue, Nashville, Tennessee, 37203.

JMcM b

Redemption outlets (banks and wholesalers) will be notified of this order the day it becomes effective. All acceptable coupons on hand at the time this order becomes effective may be redeemed if presented for Mr. Haley's examination within three days after the effective date.

This determination of disqualification shall be final unless you submit a request for review in writing to the Food Stamp Review Officer, Food and Nutrition Service, U. S. Department of Agriculture, Washington, D. C., 20250, prior to said effective date. If a timely request for review is made, administrative action will be held in abeyance, as provided in Part 1603 (30 F.R. 13132) of the regulations, until a decision on your request has been made by the Food Stamp Review Officer. A copy of the regulations governing the Food Stamp Program is attached for your information in this regard.

This action is taken under the authority of Section 1602.6 (a) of the regulations governing the Food Stamp Program.

This determination of disqualification from participation in the program shall not preclude the Department of Agriculture or any other agency or department of the United States from taking further action to collect any claim determined under the regulations governing the Food Stamp Program or under any other pertinent statutes or regulations, nor shall this determination preclude prosecution under any applicable penal statutes.

Sincerely yours,

B. Hicks Elmore, Supervisor
Food Stamp Program

Attachment

Miss Kelley
Finance Division
OIG (A-145-642)
RIG
Regional Attorney (4)
OIC (Nashville, Tenn.)

POOR COPY

FOOD AND NUTRITION SERVICE
Southeast Regional Office
1795 Peachtree Road, N.E., Room 302
Atlanta, Georgia 30309

DW

December 8, 1969

CERTIFIED MAIL - Return Receipt Requested

Mr. William L. Martin, Owner
Bill Martin's Food Town
221 South Eleventh Street
Nashville, Tennessee 37206

Dear Mr. Martin:

Administrative review and evaluation have been made of the information and evidence contained in the retailer program file, the investigative report, and your reply of October 16, 1969, to our letter of charges dated September 24, 1969. Based upon the review of the information and evidence, and pursuant to Section 1602.6 (c) of the Food Stamp Program regulations, it is the determination of the Director, Food Stamp Division, Food and Nutrition Service, U. S. Department of Agriculture:

1. That you or your employees violated the regulations governing the Food Stamp Program, 7 C.F.R. 1600 (30 F.R. 4315 as amended 30 F.R. 8155), 1602 (30 F.R. 6859 as amended 30 F.R. 13861 and 32 F.R. 8519), and 1603 (30 F.R. 13132), in the manner specified in the letter of charges to you dated September 24, 1969.

2. That such irregular practices demonstrate a lack of regard for program regulations.

3. That Bill Martin's Food Town, and the owner thereof, shall be disqualified from the privilege of participation in the Food Stamp Program.

Therefore, you are hereby notified that Bill Martin's Food Town and Mr. William L. Martin, owner, are disqualified from participation in the Food Stamp Program and Authorization Card TE-56-38-A is revoked effective ten calendar days from your receipt of this notice. However, on or after the expiration of six months from the above effective date, you may apply for reinstatement, and if approved, you may be issued a new authorization card and number. Authorization Card TE-56-38-A and all posters, forms, and other official material relating to the program must be surrendered on the above effective date to Leo Haley, Officer-in-Charge, U. S. Department of Agriculture, Food and Nutrition Service, Suite 519, West End Building, 1808 West End Avenue, Nashville, Tennessee, 37203.

Redemption outlets (banks and wholesalers) will be notified of this order the day it becomes effective. All acceptable coupons on hand at the time this order becomes effective may be redeemed if presented for Mr. Haley's examination within three days after the effective date.

This determination of disqualification shall be final unless you submit a request for review in writing to the Food Stamp Review Officer, Food and Nutrition Service, U. S. Department of Agriculture, Washington, D. C., 20250, prior to said effective date. If a timely request for review is made, administrative action will be held in abeyance, as provided in Part 1603 (30 F.R. 13132) of the regulations, until a decision on your request has been made by the Food Stamp Review Officer. A copy of the regulations governing the Food Stamp Program is attached for your information in this regard.

This action is taken under the authority of Section 1602.6 (a) of the regulations governing the Food Stamp Program.

This determination of disqualification from participation in the program shall not preclude the Department of Agriculture or any other agency or department of the United States from taking further action to collect any claim determined under the regulations governing the Food Stamp Program or under any other pertinent statutes or regulations, nor shall this determination preclude prosecution under any applicable penal statutes.

Sincerely yours,

R. Hicks Elmore, Supervisor
Food Stamp Program

Attachment

CC: Miss Kelley
Finance Division
OIG (A-145-643)
RIG
Regional Attorney (4)
OIC (Nashville, Tenn.)

9 December 1969

Food Stamp Review Officer
Food and Nutrition Service
U.S. Department of Agriculture
Washington, D.C. 20250

Dear Sir:

Under the provisions of Section 1602.6(a) of the Department of Agriculture, Food Stamp Program Regulations I, Bill Martin have been exempt from operating two Food Town Stores under the Food Stamp Program. This was brought about as a result of some of my employees and former employees failing to comply with all of the Food Stamp Regulations.

My stores are operated as Bill Martin Food Town No. 1, 221 South 11th and Bill Martin Food Town No. 3, 701 North First, Nashville Davidson County, Tennessee. The stores are located in a meighborhood where a large majority of the people depend on Food Stamps to supliment their income. Food Stamps represent a large percentage of my volume and to lose this preveledge will create a severe hardship on me and my stores.

Having spent more than twenty years in the army and more the twenty years with the Federal Government in a civil status I am aware of the importance of complying with regulations and I would not nor would I permit an employee to violate a regulati governing the Food Stamp Program nor any other law or regulation under which we are to live by.

When the Food Stamp Program was extended to this City I wit three employees attended a class of instructions on the proper handling of the Food Stamp program. We were instructed thorou in the procedures to follow in carrying out this program and instructing other employees. Since this program went into effe we have had a tremendous turn-over in personnel. The help situation is a critical point and it is almost impossible to fin the type of help necessary to carry on. Since these violations have been brought to my attention one employee has been suspende as a result of the Food Stamp program the others that violated the regulation governing Food Stamp handling have been repremand and put on probation for a period of time. Each new employee is thoroughly instructed in the handling of Food Stamps and advised that any violation will result in immediate suspension.

Pursuant to Section 1602.8 of the Food Stamp Program Regula a review of the Southeast Regional determination and further consideration of permitting my stores to continue to participate in handling food Stamps is requested. I deeply regret that thes violations occurred and I have taken every precaution to see tha they do not occur again.

Any consideration that you can give my request for review and reconsideration will be greatly appreciated.

Sincerely,

William L. Martin
Bill Martin Food Town
(owner)

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

RECEIVED FOR
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MAY 14 19
BRANDON LEWI
By

WILLIAM L. MARTIN)
)
vs.) CIVIL ACTION NO. 5940
)
UNITED STATES OF AMERICA)

U.S. ATTORNEY'S OFFICE
RECEIVED
MAY 14 1971
NASHVILLE, TENNESSEE

REVISED FINDINGS OF FACT

The Court finds that the petitioner, William L. Martin, operated two stores at the time of the incidents involved in the present case. That as a result of complaints, both stores were checked by government agents, and the unauthorized items that appear in the report filed by the Consumer Food Program, a branch of the United States Government, were purchased. These items are ineligible items under the food stamp program.

The petitioner Martin does not deny that these violations occurred. He states that these items were sold due to the carelessness of his checkout clerks. He admits that he had received an orientation program and had been warned on one prior occasion regarding such violations.

Furthermore, since the time of the incidents on which this litigation is based, he has sold one of the stores and has acquired two different stores, which have been qualified for, and are participating in, the food stamp program. There have been no subsequent indications of any violations, either in the two stores acquired, or in the store which he was operating at the time the violations occurred, out of which this litigation arises, and which he still owns.

There is no question about the honesty and sincerity of William L. Martin, his honesty being conceded by the Government. He has cooperated with the Government in its investigation. It is conceded, however, that the carelessness and negligence of his employees is his negligence under applicable legal principles.

The penalty of suspension is in the nature of a punishment, and is, in some respects, equivalent to a fine. Realizing that the United States Government must police violations of the food stamp program, and further realizing that, without proper policing of this program, chaos would ensue, this Court feels, nevertheless, that plaintiff's suspension from the program for six months is too harsh under the present facts and circumstances, when compared with the reported cases dealing with violations of the same statute, and when obvious, admitted criminal violators in this district receive probation, as in the untaxed liquor cases, and other similar cases. However, this Court feels that this petitioner cannot be permitted to think that he can allow violations of the rules of the food stamp program with impunity.

Therefore, it is the feeling of this Court that petitioner's store at 221 South 11th Street should be disqualified from the food stamp program for a period of thirty (30) days from the date of the hearing on this matter, and a proper order will be drawn.

United States District Judge

ATTEST: A TRUE COPY

Brandon Lewis, Clerk

UNITED STATES DISTRICT COURT RECEIVED FOR ENTRY

FOR THE MIDDLE DISTRICT OF TENNESSEE 3:41 P.M.

NASHVILLE DIVISION MAY 17 1971

BRANDON LEWIS, Clerk

By: [illegible] D.C.

WILLIAM L. MARTIN)

v.) CIVIL NO. 5940

UNITED STATES OF AMERICA)

U.S. ATTORNEY'S OFFICE FILED MAY 13 1971 NASHVILLE, TENNESSEE

AMENDED ORDER

In accordance with the Revised Findings of Fact heretofore submitted, it was ordered by the Court that the thirty (30)-day disqualification imposed in this case begin on May 7, 1971. However, the Court is informed that the United States Attorney did not receive notice of the beginning date until May 14, 1971.

IT IS THEREFORE ORDERED that the order heretofore imposing a thirty (30)-day disqualification be and the same is amended to provide that the period of disqualification will extend from and after May 17, 1971.

ENTER:

L. Clure Morton

UNITED STATES DISTRICT JUDGE

Approved for Entry:

CHARLES H. ANDERSON
United States Attorney

By: IRA E. PARKER, III
Assistant U. S. Attorney

ATTEST: A TRUE COPY

No. 71-1763

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

WILLIAM L. MARTIN, *Plaintiff-Appellee,* v. UNITED STATES OF AMERICA, *Defendant-Appellant.*	APPEAL from United States District Court for the Middle District of Tennessee, Nashville Division.

Decided and Filed April 21, 1972.

Before: WEICK, EDWARDS and McCREE, Circuit Judges.

WEICK, Circuit Judge. The complaint filed in the District Court sought to review the validity of a final determination by the Secretary of Agriculture disqualifying two retail food stores owned by the plaintiff from participation in the Food Stamp Program, for a period of six months, because of violation of the Food Stamp Act of 1964[1] and regulations applicable thereto.[2]

It was undisputed that there had been repeated violations of the Act by plaintiff's employees in both stores, in accepting food stamps in exchange for non-food items, notwithstanding the fact that when the stores were authorized to participate in the program, officials from the Department of Agriculture visited the stores for orientation purposes and gave instructions as to the law and the applicable regulations.

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[1] 7 U.S.C. § 2020.

[2] 7 C.F.R. § 272.6(a).

Complaints concerning the violations had been made to the local office of the Secretary and his agents then made an investigation and purchased ineligible items at both stores. Plaintiff blamed the occurrences on turnover of employees in his stores and on his negligence in failing to set up a program to instruct new employees when they were hired.

The District Court upheld the disqualification of the two stores but undertook to reduce the period of disqualification from six months to thirty days. It was the view of the Court that the suspension of six months ordered by the Secretary was too harsh.

The Secretary has appealed. The only question raised in the appeal is as to the authority of the District Court to modify the sanction.

Section 5(a) of the Act provides that food stamps "shall be used only to purchase food".[3] The applicable regulation contains the same provision.[4]

Section 11 of the Act provides for the disqualification of a store from participation in the program for violation of the Act or any regulation. The period of disqualification was authorized to be fixed by regulation.[5] The regulation authorized suspension from participation in the program for a reasonable period of time, not to exceed three years.[6]

Thus, we have a clear case of admitted violations and sanctions imposed by the Secretary well within the range of his authority, expressly conferred on him by statute and regulation.

Judicial review is provided under Section 13 of the Act[7] as follows:

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[3] 7 U.S.C. § 2013(a).

[4] 7 C.F.R. § 272(b).

[5] 7 U.S.C. § 2013(a).

[6] 7 C.F.R. § 272.6.

[7] 7 U.S.C. § 2022.

No. 71-1763

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

WILLIAM L. MARTIN, *Plaintiff-Appellee,* v. UNITED STATES OF AMERICA, *Defendant-Appellant.*	APPEAL from United States District Court for the Middle District of Tennessee, Nashville Division.

Decided and Filed April 21, 1972.

Before: WEICK, EDWARDS and MCCREE, Circuit Judges.

WEICK, Circuit Judge. The complaint filed in the District Court sought to review the validity of a final determination by the Secretary of Agriculture disqualifying two retail food stores owned by the plaintiff from participation in the Food Stamp Program, for a period of six months, because of violation of the Food Stamp Act of 1964[1] and regulations applicable thereto.[2]

It was undisputed that there had been repeated violations of the Act by plaintiff's employees in both stores, in accepting food stamps in exchange for non-food items, notwithstanding the fact that when the stores were authorized to participate in the program, officials from the Department of Agriculture visited the stores for orientation purposes and gave instructions as to the law and the applicable regulations.

---

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Complaints concerning the violations had been made to the local office of the Secretary and his agents then made an investigation and purchased ineligible items at both stores. Plaintiff blamed the occurrences on turnover of employees in his stores and on his negligence in failing to set up a program to instruct new employees when they were hired.

The District Court upheld the disqualification of the two stores but undertook to reduce the period of disqualification from six months to thirty days. It was the view of the Court that the suspension of six months ordered by the Secretary was too harsh.

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Section 5(a) of the Act provides that food stamps "shall be used only to purchase food".[3] The applicable regulation contains the same provision.[4]

Section 11 of the Act provides for the disqualification of a store from participation in the program for violation of the Act or any regulation. The period of disqualification was authorized to be fixed by regulation.[5] The regulation authorized suspension from participation in the program for a reasonable period of time, not to exceed three years.[6]

Thus, we have a clear case of admitted violations and sanctions imposed by the Secretary well within the range of his authority, expressly conferred on him by statute and regulation.

Judicial review is provided under Section 13 of the Act[7] as follows:

---

[3] 7 U.S.C. § 2013(a).

[4] 7 C.F.R. § 272(b).

[5] 7 U.S.C. § 2013(a).

[6] 7 C.F.R. § 272.6.

[7] 7 U.S.C. § 2022.

> "If the store or concern feels aggrieved by such final determination he may obtain judicial review thereof by filing a complaint against the United States . . . requesting the court to set aside such determination. . . . The suit . . . shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action in issue. If the court determines that such administrative action is invalid it shall enter such judgment or order as it determines is in accordance with the law and the evidence."

The statute authorizes a review only on the merits of the case, and not on the period of disqualification.

It will be noted that the review is de novo of the "final determination" of disqualification. The reviewing court is authorized to "determine the validity of the questioned administrative action in issue." The Court did make that determination by holding that the stores were disqualified from participation in the Food Stamp Program because of the admitted repeated violations. Upon making that determination the jurisdiction of the Court ended.

The statute authorized the Court to "enter such judgment or order as it determines is in accordance with the law and the evidence" only if it determined that the administrative action is invalid. Here the Court made no such determination of invalidity.

In the Act, no authority was conferred on the District Court to change the period of suspension ordered by the Secretary, or to impose new sanctions.[8]

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[8] In mentioning that the sanctions imposed by the Secretary were too harsh, the Court referred to lesser sanctions imposed in reported cases (two District Court cases), and the practice in his District of granting probation in untaxed liquor cases and in other similar criminal cases. The Court also mentioned the fact that since the disqualification, plaintiff had sold one of his stores and opened two new stores, both of which had been qualified by the Secretary under the Act. We think the comparisons were irrelevant. The fact that new stores were qualified cannot excuse violations in the other stores.

The sanctions imposed by the Secretary of Agriculture under the Commodities Exchange Act have been held to be not subject to judicial review. *G. H. Miller & Co.* v. *United States*, 260 F.2d 286, 296 (7th Cir. en banc 1958), *cert. denied*, 359 U.S. 907 (1959). To the same effect under the Perishable Agricultural Commodities Act, *Eastern Produce Co.* v. *Benson*, 278 F.2d 606, 610 (3d Cir. 1960). We see no substantial difference between the review provided by these Acts and that provided by the Food Stamp Act.

We hold that the reviewing court lacked authority to change the sanctions imposed by the Secretary.

Reversed.

EDWARDS, Circuit Judge, dissenting. Congress saw fit to provide for "a trial de novo" in the District Court. Under any normal construction of legal language, such a grant of power gives to the reviewing court all the power that the court or agency below possessed, including the power to enter a disposition or judgment different from that originally entered.

The usual definition of trial de novo is:

> "trial de novo. A trial anew, a re-trial in a superior court on an appeal of the case from an inferior court." BALLENTINE'S LAW DICTIONARY 1300 (2d ed. 1948).

Corpus Juris Secundum heads its section on Trial De Novo with these words:

> "A trial de novo is a trial had as though no action whatever had been instituted in the court below, a new trial in an appellate tribunal." 5 C.J.S. *Appeal & Error* § 1524 (1958).

My brothers construe the language which follows "trial de novo by the court" as a limitation upon that term. On its face, however, the phrase "in which the court shall determine the validity of the questioned administrative action in issue" describes but does not limit.

As I read the statute the majority's construction reads into the statute the word "solely" which Congress saw fit not to employ.

I do not deny that there is force to the arguments of my breathren. But rather than accept what I believe to be misuse of the term "trial de novo" I would refer the Secretary to Congress to seek amendment of the statute in the event his construction proves to represent Congressional intent.

I would affirm the judgment of the District Court.

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-100

WILLIAM L. MARTIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 25a-28a) is reported at 459 F. 2d 300. The district court rendered no opinion.

JURISDICTION

The judgment of the court of appeals was entered on April 21, 1972. The petition for a writ of certiorari was

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JURISDICTION

The judgment of the court of appeals was entered on April 21, 1972. The petition for a writ of certiorari was

filed on July 18, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Food Stamp Act of 1964 in providing for *de novo* review of the validity of an administrative disqualification of a food store permits the reviewing court to reduce the term of disqualification although it has found that disqualification was validly imposed under the statute and that the term imposed was within the maximum limit allowed by the statute and implementing regulations.

STATUTES AND REGULATIONS INVOLVED

1. Section 11 of the Food Stamp Act, 7 U.S.C. 2020, provides that:

> Any approved retail food store or wholesale food concern may be disqualified from further participation in the food stamp program on a finding, made as specified in the regulations, that such store or concern has violated any of the provisions of this chapter, or of the regulations issued pursuant to this chapter. Such disqualification shall be for such period of time as may be determined in accordance with regulations issued pursuant to this chapter. The action of disqualification shall be subject to review as provided in section 2022 of this title.

Section 13 of the Act, 7 U.S.C. 2022, provides in pertinent part as follows:

> * * * If the store or concern feels aggrieved by such final determination he may obtain judicial

review thereof by filing a complaint against the United States * * * requesting the court to set aside such determination. * * * The suit * * * shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action in issue. If the court determines that such administrative action is invalid it shall enter such judgment or order as it determines is in accordance with the law and the evidence. * * *

2. Section 272.6(a) of the Secretary's regulation, 7 C.F.R. 272.6(a), provides in pertinent part as follows:

> Any authorized retail food store or authorized wholesale food concern may be disqualified from further participation in the [Food Stamp] Program by FNS [Food and Nutrition Service of the U.S. Department of Agriculture] for a reasonable period of time, not to exceed three years, as FNS may determine, if such retail food store or wholesale food concern fails to comply with the Food Stamp Act of 1964, as amended, or the provisions of this part * * *.

STATEMENT

The Secretary of Agriculture disqualified petitioner's retail food store from participation in the Food Stamp Program for six months for admitted violations of the Food Stamp Act of 1964—exchanging non-food items for food stamps. Under the applicable regulations (7 C.F.R. 272.6) the Secretary may disqualify a store for up to three years.

Acceptance of food stamps in exchange for non-food items is expressly prohibited by section 4(a) of the

Food Stamp Act, 7 U.S.C. 2013(a), and 7 C.F.R. 272.2(b). Petitioner admitted that he had been informed of the requirements and that he had been warned on a prior occasion regarding such violations (Pet. App. 3a, 6a, 22a). He also admitted that he had committed the violations (Pet. App. 4a, 22a), attributing them to his negligence in not establishing an instruction program for new employees (Pet. App. 13a).

Petitioner brought this action in the district court to review the disqualification of his store. Judicial review of the "final determination" of disqualification is authorized by section 13 of the Act, 7 U.S.C. 2022, which provides for "a trial de novo by the court in which the court shall determine the validity of the questioned administrative action in issue." Plaintiff did not challenge the merits of the disqualification; he admitted the violations and attacked only the six-month disqualification as too harsh (Pet. App. 1a).

The district court held that the six-month disqualification was "too harsh under the present facts and circumstances, when compared with the reported cases dealing with violations of the same statute, and when obvious, admitted criminal violators in this district receive probation, as in the untaxed liquor cases, and other similar cases" (Pet. App. 23a). The court reduced the disqualification to 30 days.

The court of appeals reversed. The court held that the Food Stamp Act permits *de novo* review of only the validity of the disqualification itself, not its length. It ruled that since the violations were admitted and the disqualification period was within the Secretary's

authority, the district court had no warrant to modify it (Pet. App. 27a).[1]

ARGUMENT

The court of appeals correctly held that the "trial *de novo*" provided by Section 13 of the Food Stamp Act, *supra*, pp. 2-3, covers only the merits of disqualifying the store, not the length of sanction. The decision is in accord with the recent decision of the Fourth Circuit in *Welch* v. *United States* (C.A. 4, No. 71-2019, decided July 11, 1972) and the *dictum* of the Seventh Circuit in *Save More of Gary, Inc.* v. *United States*, 442 F. 2d 36, 39, petition for certiorari dismissed, 404 U.S. 987.

The language of the statute supports the court's conclusion: it provides for *de novo* review of "the validity" of the administrative action which is challenged. A disqualification that is within the Secretary's authorized power is "valid" even though the reviewing court may consider it "too harsh," as the district court did here. The statement in Section 13 that there is to be a *de novo* review of the "validity" of the administrative action distinguishes this statute from other statutes which provide for *de novo* review without this restriction. See, *e.g.*, *Spano* v. *Western Fruit Growers, Inc.*, 83 F. 2d 150, 152 (C.A. 10) (reparation provision of the

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[1] Judge Edwards dissented. While conceding that there was force to the position of the majority, he argued that Congress had not limited judicial review "solely" to a determination of the validity of the administrative action, but had merely used that phrase as descriptive of the review afforded (Pet. App. 29a).

Perishable Agricultural Commodities Act, 7 U.S.C. 499g(c)).

The court's interpretation of Section 13 as not permitting *de novo* review of the length of the disqualification comports with the general rule that suspensions that are within the permissible range of statutory and regulatory authority are not subject to judicial modification.[2] See, *e.g., G.H. Miller & Co* v. *United States,* 260 F. 2d 286, 296 (C.A. 7), certiorari denied, 359 U.S. 907 (Commodities Exchange Act); *Eastern Produce Co.* v. *Benson,* 278 F. 2d 606, 610 (C.A. 3) (Perishable Agricultural Commodities Act); but see *Glover Livestock Commission Company* v. *Hardin,* 454 F. 2d 109 (C.A. 8), petition for certiorari pending, No. 71-1545. The determination of the appropriate sanction for a retail store that has violated the Food Stamp Act is a matter particularly within the expert judgment of the Secretary of Agriculture. The court of appeals correctly concluded that in Section 13 of the Food Stamp Act Congress did not intend to give the district courts authority to substitute their judgment for that of the Secretary with respect to the appropriate penalty.

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[2] *United States* v. *First City Nat. Bank,* 386 U.S. 361, upon which petitioner relies (Pet. 21-22), involved the Bank Merger Act of 1966, under which the district court does not review the action of the bank regulatory agency approving the merger at all, but determines *de novo* the validity of the merger under the antitrust laws.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1972.

☆ U.S. Government Printing Office: 1972—473-889/1919